



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** JTP Radiation, Inc.

**File:** B-233579.2

**Date:** May 16, 1989

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### DIGEST

Where protester essentially reiterates original protest arguments which have already been considered and rejected request for reconsideration is denied.

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### DECISION

JTP Radiation, Inc., requests reconsideration of our decision in JTP Radiation, Inc., B-233579, Mar. 28, 1989, 89-1 CPD ¶ 315, in which we denied JTP's protest against the rejection of JTP's proposal and the acceptance of the proposal of the Rantec Division of Emerson Electric Company under request for proposals (RFP) No. F04606-88-R-0594, issued by the Sacramento Air Logistics Center, California, for 12 ground-based tactical air navigation antennas providing multichannel beam systems for aircraft guidance.

The RFP was issued on a noncompetitive basis to purchase 12 OE/258 antennas, which are manufactured by Rantec. The RFP clearly indicated that unless another source demonstrated to the Air Force's satisfaction prior to award that its product would meet the Air Force's requirements, Rantec would receive the award.<sup>1/</sup> This acquisition was for a "limited quantity" necessary to fulfill the Air Force's interim requirements until replacement antennas are delivered to the Air Force under a fully competitive procurement currently being conducted by the Federal Aviation Administration (FAA) to replace the unreliable circa 1965 antennas now used by the Air Force.

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<sup>1/</sup> Although JTP continues to assert the RFP was competitive, we find this belief was unreasonable; the RFP was clearly stated to be restricted.

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Although JTP submitted a proposal under the RFP offering its JTP-900 antenna, we found the Air Force had a reasonable basis for determining that Rantec, whose OE-258 antenna is the only acceptable and tested antenna in the Air Force inventory, is the only source that could meet the Air Force's technical and schedule requirements for this interim purchase. In this regard, we found it undisputed that the Air Force needed these antennas by December 29, 1989, because of the unreliability of the current antennas and increasing unavailability of parts for them after that date. The delivery of replacement antennas under the on-going competitive FAA procurement would not begin until the summer of 1991. Moreover, we found the Air Force could reasonably insist that antennas offered by alternate sources, such as JTP, be tested to assure the antennas meet Air Force requirements. We found that since "[t]he record does not indicate, nor does JTP claim, that JTP could successfully have its antenna tested by the Air Force under pre-qualification or first article tests, and still meet the required delivery date," the "Air Force has a reasonable basis for determining that only Rantec can satisfy this interim requirement."

In its request for reconsideration, JTP asserts that the Air Force justification, on which our decision was based, was only first raised in the Air Force's comments which were submitted to our Office on January 24, 1989, after the informal conference on the protest. JTP claims that not only is this justification "untimely" raised, but that the Air Force never furnished it a copy of these post-conference comments and it only obtained a copy of these comments from our Office on March 20, 1989, shortly before our decision was issued. JTP states that its March 24 response to the Air Force comments was apparently not considered by our Office in reaching our decision. JTP claims that it did and does dispute the urgency of this procurement as well as the need for testing its products, as indicated in its March 24 letter.

The Air Force has advised that it did furnish JTP a copy of its post-conference comments, and the comments do indicate that a copy was sent to JTP. Moreover, although the post-conference comments were submitted on the January 24 due date by both JTP and the Air Force, it was not until March 20 that JTP indicated to our Office that it did not receive the Air Force comments. Since we specifically requested at the conference that the Air Force address certain matters in the post-conference comments, we think it unreasonable for JTP to delay almost 2 months after the due date before complaining that it did not receive a copy of

the comments. See Kings Point Industries, B-228150, Nov. 10, 1987, 87-2 CPD ¶ 474. In any case, JTP did respond to the Air Force's post-conference comments on March 24, and, in reaching our decision, we considered JTP's response in view of its allegation that it had not timely received the Air Force's comments.

Furthermore, we do not agree that the Air Force post-conference comments were an "untimely" justification of the noncompetitive award; the agency report on the protest, to which JTP had an opportunity to respond in its post-conference comments, discussed each of the material factors on which we upheld the noncompetitive award: the December 29 need date and the requirement that JTP's antenna be tested to assure its reliability. Yet, in neither its January 24 post-conference comments nor its March 24 submission did JTP dispute that the antennas were needed by December 29. Moreover, although JTP has claimed that its JTP-900 antenna was tested by FAA, which should satisfy the Air Force concerns, the record still shows no evidence of any testing responsive to the legitimate Air Force reliability concerns based on the JTP-900 design on load balancing, bearings and motor replacement. As indicated in our prior decision, since there are first article tests required in the FAA procurement to specifically test and verify reliability before acceptance of antennas, it follows that the Air Force could also reasonably require reliability testing for this procurement. Although JTP now claims that its JTP-900 could pass any test the Air Force specified and still meet the December 29 delivery requirements, JTP did not make this unsupported claim in its earlier submissions.

JTP also claims that the Air Force was obligated to wait until the JTP-900 was tested before it could proceed to the sole-source award. However, as stated in our prior decision, an agency need not delay a proposed award in order to specify precise qualification requirement to assure that unapproved sources could qualify in time to receive an award. Kitco, Inc., 67 Comp. Gen. 110 (1987), 87-2 CPD ¶ 540.

JTP essentially reiterates its original protest arguments which we have already considered and rejected. Since the protester has presented no argument or information

establishing that our prior decision was legally or factually erroneous, we deny the request for reconsideration. See 4 C.F.R. § 21.12(a) (1988).



James F. Hinchman  
General Counsel